

Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-528-8675
lhm28843@sbcglobal.net



***Via Certified Mail –
Return Receipt Requested***

January 28, 2015

Paul D. Jones, II, P.E., General Manager
Members, Board of Directors
Eastern Municipal Water District
2270 Trumble Road
P.O. Box 8300
Perris, CA 92572-8300

Re: Notice of Violations and Intent to File Suit Under the Clean Water Act

Dear Mr. Jones and Members of the Board:

STATUTORY NOTICE

This Notice is provided on behalf of California River Watch ("River Watch") with regard to violations of the Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that River Watch believes are occurring throughout Eastern Municipal Water District's water treatment and reclamation facilities ("Facilities") and their associated collections systems. River Watch hereby places the Eastern Municipal Water District, hereinafter referred to as the "District", as owner and operator of the Moreno Valley, Perris Valley, San Jacinto Valley, Sun City and Temecula Valley Regional Water Reclamation Facilities and their associated collection systems on notice, that following the expiration of 60 days from the date of this Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against the District for continuing violations of an effluent standard or limitation, permit condition or requirement, or a Federal or State Order or Permit issued under CWA § 402 pursuant to CWA § 301(a), and Water Quality Control Plans ("Basin Plans") adopted by the Santa Ana Regional Water Quality Control Board and the San Diego Regional Water Quality Control Board, as the result of alleged violations of permit conditions or limitations in the District's National Pollutant Discharge Elimination System ("NPDES") permit.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that discharge of pollutants is prohibited with the exception of enumerated statutory exceptions, CWA § 301(a), 33 U.S.C. § 1311(a). One such exception authorizes a polluter, which has been issued a permit pursuant to CWA § 402, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the 33 U.S.C. § 1311(a) prohibition, such that violation of a NPDES permit limitation places a polluter in violation of 33 U.S.C. § 1365.

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the Environmental Protection Agency ("EPA") to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria. (See 33 U.S.C. § 1342(b)). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board and several subsidiary regional water quality control boards to issue NPDES permits. The entities responsible for issuing NPDES permits and otherwise regulating the District's operations in the regions at issue in this Notice are the Santa Ana Regional Water Quality Control Board ("RWQCB Region 8"), and the San Diego Regional Water Quality Control Board ("RWQCB Region 9").

While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the statute's permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute (see 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by the District with its NPDES permit.

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. *The specified standard, limitation, or order alleged to have been violated.*

River Watch has identified in this Notice the specific standards and limitations of Regional Water Quality Control Board Order No. R8-2009-0014, NPDES No. CA8000188 (Waste Discharge Requirements for Eastern Municipal Water District, Regionwide Water Recycling System, Temescal Creek Discharge, Riverside County), as being violated. A violation of the NPDES permit is a violation of the CWA.

2. *The activity alleged to constitute a violation.*

Most often, the NPDES permit standards and limitations being violated are self-explanatory and an examination of the language of the permit itself is sufficient to inform the District of its failure to fully comply with the permit requirements. This is especially so since the District is responsible for monitoring its operations to ensure compliance with all permit conditions. River Watch, however, sets forth the following narratives in this Notice describing with particularity the activities it alleges as violations. River Watch does so following a review of public records (e.g. the District's Self Monitoring Reports ("SMRs")) relating to the District's operations at the Facilities. Additional records and other public documents in the District's possession or otherwise available to the District regarding its NPDES permit (all of which are hereby incorporated by reference) may, upon discovery, reveal additional violations.

River Watch contends that from January 21, 2010 through January 21, 2015, the District violated the following identified requirements of its NPDES permit, the Basin Plans and the Code of Federal Regulations, as those requirements are referenced in the NPDES permit, with respect to the Facilities and their associated collection systems:

A. Collection System Subsurface Discharges Caused by Underground Exfiltration

1825 - Collection System Subsurface Discharges Caused by Underground Exfiltration

The District owns and operates 2 collection systems: the Moreno Valley, Perris Valley, San Jacinto Valley, and Sun City collection system ("EMWD CS") within the Santa Ana watershed, and the Temecula Valley Regional Water Reclamation Facilities ("Temecula Valley RCS") in the Santa Margarita watershed. Underground discharges in which untreated sewage is discharged from the District's collection systems prior to reaching the Facilities are alleged to have been continuous throughout the period January 21, 2010 through January 21, 2015 (1825 separate violations) in violation of the following NPDES permit prohibitions:

Order No. R8-2009-0014 –

Discharge Prohibition III.C: "Discharge of wastewater at a location or in a manner different from those described in this Order is prohibited."

Discharge Prohibition III.D: "The bypass or overflow of untreated wastewater or wastes to surface waters or surface water drainage courses is prohibited, except as allowed in Standard Provision I.G. of Attachment D, Federal Standard Provisions."

Discharge Prohibition III.E: "The discharge of any substances in concentrations toxic to animal or plant life is prohibited."

Exfiltration caused by pipeline cracks and other structural defects in the collection system results in discharges to adjacent surface waters via underground hydrological connections. The District's internal reports indicate discharges to surface waters not reported to the California Integrated Water Quality System ("CIWQS") reporting system. Because the entire system has not been adequately inspected by means of closed circuit television ("CCTV"), the District has insufficient information concerning the condition or the extent of exfiltration for a significant portion of the collection system. These sections of the system are old and in need of repair. Untreated sewage is discharged from cracks, displaced joints, eroded segments, etc., into groundwater hydrologically connected to surface waters. Evidence indicates extensive exfiltration from lines within 200 feet of a surface water.

River Watch alleges that such discharges are continuous wherever aging, damaged, and/or structurally defective sewer lines in the District's collection systems are located adjacent to surface waters including Murrieta Creek, the San Diego Canal, the Santa Ana River, and Temescal Creek. Surface waters and groundwater become contaminated with fecal coliform, exposing people to pathogens. Chronic failures in the collection system pose a substantial threat to public health. Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines in other systems have verified the contamination of the adjacent waters with untreated sewage.¹

Evidence of exfiltration can be found in mass balance data, "inflow and infiltration" ("I/I") data, video inspection, and tests of waterways adjacent to sewer lines for nutrients, human pathogens and other human markers such as caffeine. Exfiltration from the District's collection system is a daily occurrence and a violation of the District's NPDES permit and the CWA.

B. Collection System Surface Discharges Caused by Sanitary Sewer Overflows

43 - Collection System Surface Discharges Caused by Sanitary Sewer Overflows

Sanitary Sewer Overflows ("SSOs") in which untreated sewage is discharged above ground from the collection systems prior to reaching the Facilities, are alleged to have

1

See the Report of Human Marker Study issued in July of 2008 and conducted by Dr. Michael L. Johnson, U.C. Davis water quality expert, performed for the City of Ukiah, finding the presence of human derived bacteria in two creeks adjacent to defective sewer lines.

occurred both on the dates identified in the CIWQS Interactive Public SSO Reports (43 separate violations: 28 from the EMWD CS, and 15 from the Temecula Valley RCS), and on dates when no reports were filed by the District, all in violation of the following NPDES permit prohibitions:

Order No. R8-2009-0014 –

Discharge Prohibition III.C: “Discharge of wastewater at a location or in a manner different from those described in this Order is prohibited.”

Discharge Prohibition III.D. “The bypass or overflow of untreated wastewater or wastes to surface waters or surface water drainage courses is prohibited, except as allowed in Standard Provision I.G. of Attachment D, Federal Standard Provisions.”

Discharge Prohibition III.E. “The discharge of any substances in concentrations toxic to animal or plant life is prohibited.”

Releases Reported. The District’s aging collection systems have historically experienced high I/I during wet weather and flooding. Structural defects which allow I/I into the sewer lines result in a buildup of pressure which causes SSOs. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals, and storm drains which are connected to adjacent surface waters – all waters of the United States.

As recorded in CIWQS Public SSO Reports, the EMWD CS has experienced at least 28 SSOs between January 26, 2010 and November 16, 2014, with a combined volume of at least 1,317,633 gallons – 186,205 gallons of which were reported as having reached surface waters. The Temecula Valley RCS has experienced at least 15 SSOs between January 23, 2010 and May 24, 2014. The combined volume of these SSOs was at least 300,860 gallons, with only 6% recovered, yet just 8% (26,715 gallons) acknowledged as having reached surface waters. As examples, on July 29, 2013, a spill occurred from the EMWD CS at Adeline Avenue and Eucalyptus Avenue in Moreno Valley. The SSO report lists the same amount (157,430 gallons) for total volume, volume recovered, and volume which reached surface waters. This incident was noticed and responded to 3 days after the spill began. The Mariposa storm channel, a drainage course to the Pacific Ocean was impacted by this spill.

Also, on May 24, 2014, a spill of 12,990 gallons occurred from an air relief valve failure at the Pala Force Main – part of the Temecula Valley RCS. The address was not reported, and the total spill volume was 12,990 gallons, 12,890 of which reached Murrieta Creek.

Discharges to Surface Waters. River Watch's expert believes that many of the SSOs reported by the District as having been contained without reaching a surface water, did in fact discharge to surface waters, and those reported as partially reaching surface waters did so in greater volume than stated. The claim of full containment is further called into question by the fact that some of the District's SSO reports state the estimated start time of the SSO as the time when the reporting party first noticed the SSO. Studies have shown that most SSOs are noticed significantly after they have begun. The District reports that some of the discharges reach a storm drain, but fails to determine the accurate amounts which reach a surface water.

Since the volume of SSOs of any significance is estimated by multiplying the estimated flow rate by the duration, the practice of estimating a later than actual start time leads to an underestimation of both the duration and the volume. In reporting an SSO from the EMWD CS at Keller Road and Menifee Road on August 29, 2011, the estimated spill start time and agency notification time are both listed as 14:20:00, and the estimated operator arrival time and spill end time are both recorded as 14:38:00. The reported volume of that SSO is 54 gallons, however, given the unlikely accuracy of the times on the report, it is difficult to consider the stated volume as accurate.

Estimating Volume. River Watch's expert has also determined that the District's method for estimating flow rate also underestimates the volume of a SSO. Furthermore, a review of the service records calls into question the District's methodologies for determining the volume of SSOs captured. The District is a permittee under the Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements Order No. 2006-0003-DWQ ("Statewide WDR") governing the operation of sanitary sewer systems. The Statewide WDR requires that sewer system operators report SSOs to the CIWQS and include in that reporting an estimate of the volume of any spill, the volume recovered and the volume which reached a surface water. The District's field reports generally do not indicate what method was used to estimate the total volume of the spill, which further calls into question the estimates of volume recovered and volume reaching surface waters. River Watch contends that the District is grossly underestimating the incidence and volume of SSOs that reach surface waters.

Mitigating Impacts. River Watch contends the District also fails to adequately mitigate the impacts of SSOs. The Statewide WDR mandates that the permittee shall take all feasible steps to contain and mitigate the impacts of a SSO. The EPA's 'Report to Congress on the Impacts of SSOs' identifies SSOs as a major source of microbial pathogens and oxygen depleting substances. Numerous critical habitat areas exist within the areas of the District's SSOs. There is no record of the District performing any analysis of the impacts of SSOs on critical habitat of protected species under the ESA, nor any evaluation of the

measures needed to restore water bodies designated as critical habitat from the impacts of SSOs.

The Statewide WDR requires the District to take all feasible steps and perform necessary remedial actions following the occurrence of a SSO, including limiting the volume of waste discharged, terminating the discharge, and recovering as much of the wastewater as possible. Further remedial actions include intercepting and re-routing of wastewater flows, vacuum truck recovery of the SSO, cleanup of debris at the site, and modification of the collection system to prevent further SSOs at the site. One of the most important remedial measures is the performance of adequate sampling to determine the nature and the impact of the release. As the District is severely underestimating SSOs which reach surface waters, River Watch contends the District is also not conducting sampling on most SSOs.

C. Violation of Effluent Limitations

The District's SMRs identify the following violations of effluent limitations imposed under its NPDES permit:

- 6 Effluent Discharges Exceeding Total Daily Maximum Permit Limit for Coliform: April 26, 2010, February 17, 2011, March 26, 2011, March 31, 2011, June 20, 2011, and July 2, 2011.**
- 2 Effluent Discharges Exceeding the Permit Limit for Ammonia: November 30, 2011 and December 9, 2011.**
- 1 Effluent Discharge Exceeding the 7-Day Limit for Coliform Bacteria: February 17, 2011**
- 1 Effluent Discharge Exceeding the Permit Limit for Dichlorobromomethane: November 30, 2011 and December 9, 2011**

Order No. R8-2009-0014, IV. Effluent Limitations and Discharge Specifications, A. Effluent Limitations – Discharge Point 001.

D. Nuisance; Impacts to Beneficial Uses

The District's NPDES permit prohibits the discharge of wastes that lead to the creation of a "nuisance" as defined under the California Water Code. The term "nuisance" is defined in California Water Code § 13050(m) as anything which meets all of the following requirements: 1) "is injurious to health, or is indecent or offensive to the senses . . . so as to interfere with the comfortable enjoyment of life or property;" 2) "affects at the same time

an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal;" and, 3) "occurs during, or as a result of, the treatment or disposal of wastes." The San Jacinto, Santa Ana, and Santa Margarita Rivers and their tributaries, which include Murrieta Creek and Temescal Creek, have many beneficial uses as defined in the Basin Plans adopted by RWQCB Region 8 and RWQCB Region 9, including water contact recreation, freshwater habitat for fish, and rare, threatened or endangered species. SSOs reaching these waters cause prohibited pollution by unreasonably affecting their beneficial uses. The District is also required by its NPDES Permit to comply with narrative standards as set forth in these Basin Plans, used when testing by numeric standards would be inadequate or impractical. Narrative standards include:

- Waters shall not contain taste or odor producing substances at concentrations which cause a nuisance or adversely affect beneficial uses;
- Waters shall not contain floating material, including solids, liquids, foams, and scum in concentrations which cause nuisance or adversely affect beneficial uses;
- The pH value shall not be changed at any time more than 0.2 pH units from that which occur naturally; and,
- The natural receiving water temperature of intrastate waters shall not be altered unless it can be demonstrated to the satisfaction of the Regional Board that such alteration in temperature does not adversely affect beneficial uses.

River Watch has found nothing in the public record to demonstrate that the District has monitored for and complied with these narrative standards. River Watch is understandably concerned regarding the effects of both surface and underground SSOs on critical habitat in and around the San Jacinto, Santa Ana, and Santa Margarita Rivers and their tributaries.

3. *The person or persons responsible for the alleged violations.*

The entity responsible for the violations alleged in this Notice is the Eastern Municipal Water District as owner and operator of the Moreno Valley, Perris Valley, San Jacinto Valley, Sun City, and Temecula Valley Regional Water Reclamation Facilities and their associated collection systems, as well as those of the District's employees responsible for compliance with the District's NPDES Permit.

4. *The location of the alleged violation.*

The location or locations of the various violations are identified in records created and/or maintained by or for the District which relate to the Facilities and related activities as described in this Notice.

Eastern Municipal Water District of Southern California is located in Perris, California, on the western side of Riverside County, approximately 75 miles southeast of Los Angeles. The District provides freshwater, wastewater and recycled water services to an area of 542 square miles from Moreno Valley to Temecula southward, and from Hemet to San Jacinto eastward. The District's retail service area includes the cities of Moreno Valley, Menifee, Murrieta, and Temecula, as well as the unincorporated communities of Good Hope, Homeland, Lakeview, Nuevo, Mead Valley, Murrieta Hot Springs, Quail Valley, Romoland, Valle Vista and Winchester. The District also supplies water on a wholesale basis to the cities of Hemet, San Jacinto, and Perris, as well as the Lake Hemet Municipal Water District, Nuevo Water Company, Elsinore Valley Municipal Water District, Western Municipal Water District, and Rancho California Water District.

The District is governed by a 5-member Board of Directors, each representing comparably sized populations in a 4-year term..

The area served by the District includes approximately 18 hospitals, 8 airports, 5 Amtrak stations, 38 colleges/universities, 32 high schools, 31 shopping centers, 34 recreational parks, and over 9 golf courses.

The wastewater system owned and operated by the District provides service to a population of approximately 768,000, and treats more than 50,000 acre feet over the course of a year. Wastewater from homes and businesses is transported using 50 pump stations connected through 1,727 miles of gravity pipeline that link to a single regionwide water recycling system connecting 5 Regional Water Reclamation Facilities. The District produces 2 levels of reclaimed water treatment: Secondary treatment, which employs biological oxidation to remove nearly all suspended solids and other impurities; and, tertiary level of treatment, which removes bacteria, viruses and virtually all suspended solids. Approximately 80% of the wastewater produced is reused throughout the watershed.

The pipeline system ultimately discharges advanced, secondary treated effluent into Temescal Creek, Salt Creek, and the San Jacinto River, tributary to the Santa Ana River. Recycled water is treated at the Temecula Valley Regional Water Reclamation Facility located in Temecula, Riverside County. The Facilities are Moreno Valley Regional Water Reclamation Facility, Perris Valley Regional Water Reclamation Facility, San Jacinto Valley

Regional Water Reclamation Facility, Sun City Regional Water Reclamation Facility and Temecula Valley Regional Water Reclamation Facility. Four of the facilities are located within the jurisdiction of RWQCB Region 8. Temecula Valley Regional Water Reclamation Facility is within the jurisdiction of RWQCB Region 9. Together, these facilities typically reclaim 46 million gallons per day (mgd) out of their 63 mgd total capacity from an estimated 218,000 sewer connections, including those served by local water agencies and municipalities. Recycled water is distributed within the Santa Margarita Hydrologic Area.

In addition, the District is one of the 26-member agencies of the Metropolitan Water District of Southern California ("MWD"), and as a result, has access to imported water direct from MWD. The District imports and sells State Project Water from northern California, and Colorado River Water, both raw and treated, via the Colorado River aqueduct. The District's drinking water is primarily imported from the MWD or from local groundwater supplying approximately 160,000 service connections.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

River Watch has examined the District's records relating to the Facilities and the associated collection system as well as records on file with RWQCB Region 8 and RWQCB Region 9 for the period from January 21, 2010 to January 21, 2015, therefore, the range of dates covered by this Notice is January 21, 2010 to January 21, 2015. River Watch may from time to time update this Notice to include violations which occur after the range of dates currently covered. Some violations are continuous, and therefore each day constitutes a violation.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving this Notice is California River Watch, referred to herein as "River Watch." River Watch is a 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California and offices in Los Angeles, California. The mailing address of River Watch's northern California office is 290 S. Main Street, #817, Sebastopol, CA 95472. The mailing address of River Watch's southern California office is 7401 Crenshaw Blvd. #422, Los Angeles, CA 90043. River Watch is dedicated to protect, enhance, and help restore surface and ground waters of California including rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna. And to educate the public concerning environmental issues associated with these environs.

River Watch members residing and recreating in the area of the Facilities and the surrounding watershed have a vital interest in bringing the District's operations at the Facilities and associated collection system into compliance with the CWA.

River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications should be addressed to:

Jack Silver, Esq.
Law Office of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-5469
Tel. 707-528-8175
Email: lhm28843@sbcglobal.net

David J. Weinsoff, Esq.
Law Office of David J. Weinsoff
138 Ridgeway Avenue
Fairfax, CA 94930
Tel. 415-460-9760
Email: david@weinsofflaw.com

RECOMMENDED REMEDIAL MEASURES

1. DEFINITIONS

- A. *Condition Assessment*: A report that comprises inspection, rating, and evaluation of the existing condition of a sewer collection system. Inspection is based upon closed circuit television ("CCTV") inspections for gravity mains; manhole inspections for structural defects; and inspections of pipe connections at the manhole. After CCTV inspection occurs, pipe conditions are assigned a grade based on the Pipeline Assessment and Certification Program ("PACP") rating system, developed by the National Association of Sewer Service Companies. The PACP is a nationally recognized sewer pipeline condition rating system for CCTV inspections.
- B. *Full Condition Assessment*: A Condition Assessment of all sewer lines in the sewer collection system with the exception of sewer lines located within 200 feet of surface waters.
- C. *Surface Water Condition Assessment*: A Condition Assessment of sewer lines in the sewer collection system located within 200 feet of surface waters, including gutters, canals and storm drains which discharge to surface waters.
- D. *Significantly Defective*: A sewer pipe is considered to be Significantly Defective if its condition receives a grade of 4 or 5 based on the PACP rating system. The PACP assigns grades based on the significance of the defect, extent of damage, percentage of flow capacity restriction, and/or the amount of pipe wall loss due to deterioration. Grades are assigned as follows:

- 5 – Most significant defect
- 4 – Significant defect
- 3 – Moderate defect
- 2 – Minor to moderate defect
- 1 – Minor defect

2. REMEDIAL MEASURES

River Watch believes the following remedial measures are necessary to bring the District into compliance with the CWA and the Basin Plans, and reflect the biological impacts of EMWD's ongoing non-compliance with the CWA:

A. SEWAGE COLLECTION SYSTEM INVESTIGATION AND REPAIR

- Repair or replacement, within two (2) years, of all sewer lines in the District's sewage collection system located within 200 feet of surface waters, including gutters, canals and storm drains which discharge to surface waters, which have been CCTV'd within the past 10 years and were rated as Significantly Defective, or given a comparable assessment.
- Within 2 years, the completion of a Surface Water Condition Assessment of sewer lines which have not been CCTV'd during the past 10 years.
- Within 2 years after completion of the Surface Water Condition Assessment above, the District will:
 - » Repair or replace all sewer lines found to be Significantly Defective;
 - » Repair or replace sewer pipe segments containing defects with a rating of 3 based on the PACP rating system, if such defect resulted in a SSO, or, if in the District's discretion, such defects are in close proximity to Significantly Defective segments that are in the process of being repaired or replaced;
 - » Ensure that sewer pipe segments that contain defects with a rating of 3 on the PACP rating system that are not repaired or replaced within 5 years after completion of the Surface Water Condition Assessment are re-CCTV'd every 5 years to ascertain the condition of the sewer line segment. If the District determines that the grade -3 sewer pipe segment has deteriorated and needs to be repaired or replaced, the District shall complete such repair or replacement within 2 years after the last CCTV cycle;

- Beginning no more than one 1 year after completion of the Surface Water Condition Assessment, the District shall commence a Full Condition Assessment to be completed within 7 years. Any sewer pipe segment receiving a rating of 4 or 5 based on the PACP rating system shall be repaired or replaced within 3 years of the rating determination;
- Implementation in the District's Capital Improvements Plan of a program to provide a Condition Assessment of all sewer lines in the collection system at least every 5 years. Said program to begin 1 year following the Full Condition Assessment described above.

B. SSO REPORTING AND RESPONSE

- Modification of the District's Backup and "SSO Response Plan" to include in its reports submitted to the CIWQS State Reporting System the following items:
 - » The method or calculations used for estimating total spill volume, spill volume that reached surface waters and spill volume recovered.
 - » For Category I Spills, a listing of nearby residences or business owners who have been contacted to attempt to establish the SSO start time, duration, and flow rate, if such start time, duration, and flow rate have not been otherwise reasonably ascertained (such as from a caller who provides information that brackets a given time that the SSO began).
- Taking of photographs of the manhole flow at the SSO site using the San Diego Method array, if applicable to the SSO, or other photographic evidence that may aid in establishing the spill volume.
- Conduction of water quality sampling and testing whenever it is estimated that 50 gallons or more of untreated or partially treated waste water enters surface waters. Constituents tested for to include: Ammonia, Fecal Coliform, E. coli and a CAM-17 toxic metal analysis. EMWD shall collect and test samples from 3 locations – the point of discharge, upstream of the point of discharge, and downstream of the point of discharge. If any of said constituents are found at higher levels in the point of discharge sample and the downstream sample than in the upstream sample, EMWD will determine and address the cause of the SSO that enters surface waters, and employ the following measures to prevent future overflows: (a) if the SSO is caused by a structural defect, then immediately spot repair the defect or replace the entire line; (b) if the defect is non-structural, such as a grease blockage or vandalism to a

manhole cover, then perform additional maintenance or cleaning, and any other appropriate measures to fix the nonstructural defect

- Creation of website capacity to track information regarding SSOs; or in the alternative, the creation of a link from the District's website to the CIWQS SSO Public Reports. Notification to be given by the District to all customers and other members of the public of the existence of the web based program, including a commitment to respond to private parties submitting overflow reports.
- Performance of human marker sampling on creeks, rivers, wetlands and the areas of Temescal Creek, Murrieta Creek, and the San Jacinto, Santa Ana, and Santa Margarita Rivers adjacent to sewer lines including to test for sewage contamination from exfiltration.

C. LATERAL INSPECTION/REPAIR PROGRAM

Creation of a mandatory, private sewer lateral inspection and repair program triggered by any of the following events:

- Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within 10 years prior to the transfer;
- The occurrence of 2 or more SSOs caused by the private sewer lateral within 2 years;
- A change of the use of the structure served (a) from residential to non-residential use, (b) to a non-residential use that will result in a higher flow than the current non-residential use, and (c) to non-residential uses where the structure served has been vacant or unoccupied for more than 3 years;
- Upon replacement or repair of any part of the sewer lateral;
- Upon issuance of a building permit with a valuation of \$25,000.00 or more;
- Upon significant repair or replacement of the main sewer line to which the lateral is attached.

CONCLUSION

The violations as set forth in this Notice effect the health and enjoyment of members of River Watch who reside and/or recreate in the affected communities identified in this Notice. Members of River Watch use the affected watershed for recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by EMWD's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person", including a governmental instrumentality or agency, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1-19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of the CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch strongly encourages EMWD to contact counsel for River Watch within **20 days** after receipt of this Notice Letter to: (1) initiate a discussion regarding the allegations detailed in this Notice, and (2) set a date for a site visit. In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating that the District is in compliance with the strict terms and conditions of its NPDES permit, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,


Jack Silver

JS:lhbm

cc: Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

✓ Regional Administrator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100

Executive Director
Santa Ana Regional Water Quality Control Board
Region 8
3737 Main Street, Suite 500
Riverside, CA 92501-3348

Executive Director
San Diego Regional Water Quality Control Board
Region 9
2375 Northside Drive, Suite 100
San Diego, CA 92108-2700